

**LETTER OF FINDINGS NUMBER: 06-0528**  
**Controlled Substance Excise Tax**  
**For the Tax Period 2005**

**NOTICE:** Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Controlled Substance Excise Tax – Imposition**

**Authority:** IC § 6-8.1-5-1(b); IC § 6-7-3-5.

The Taxpayer protests the imposition of the Controlled Substance Excise Tax.

**II. Tax Administration- Ten Percent Negligence Penalty**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#)(b,c).

The Taxpayer protests the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

On May 12, 2005, police seized marijuana from the Taxpayer's house. On September 14, 2006, the Prosecutor of the county where the Taxpayer's house was located informed the Indiana Department of Revenue (Department) that no criminal charges concerning the marijuana would be filed against the Taxpayer. The Department issued a Record of Jeopardy Finding, Jeopardy Assessment, Notice and Demand on December 12, 2006 in a base tax amount of \$20,300.00. The Taxpayer filed a protest to the assessment. A hearing was scheduled for February 1, 2007. The Taxpayer's attorney requested a continuance. The request was granted. The dates of February 26, 27, and 28 were left open for the hearing. The Hearing Officer contacted the attorney twice by telephone and once by mail requesting that a definite date and time be agreed upon for the hearing. The Hearing Officer received no response from the Taxpayer's attorney. Therefore, this decision is based on the information in the file.

**I. Controlled Substance Excise Tax – Imposition**

**DISCUSSION**

IC § 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of marijuana in the State of Indiana. All tax assessments are presumed to be valid. IC § 6-8.1-5-1(b). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.*

The police found 5,800 grams of marijuana in the Taxpayer's possession. The Taxpayer produced no documentation indicating that the Controlled Substance Excise Tax had been paid on the possession of the marijuana. The Taxpayer did not sustain her burden of proving that the Department improperly imposed the Controlled Substance Excise Tax.

**FINDING**

The Taxpayer's protest is denied.

**II. Tax Administration- Ten Percent Negligence Penalty**

**DISCUSSION**

The Taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;

(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The Taxpayer did not produce any documentation to indicate that her failure to pay the assessed Controlled Substance Excise Tax was due to reasonable cause rather than negligence.

**FINDING**

The Taxpayer's protest is denied.

*Posted: 05/23/2007 by Legislative Services Agency*

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